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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/850,354	05/07/2001	Dale Scott Crombez	200-0375	2287

28787 7590 04/18/2003

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EXAMINER

BURCH, MELODY M

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 04/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/850,354

Applicant(s)

CROMBEZ ET AL.

Examiner

Melody M. Burch

Art Unit

3683

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-4, 7-13

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 3. Applicant's reply has overcome the following rejection(s): the 112 second rejection of claim 12 and the 112 first rejection to claim 7.

Continuation of 5. does NOT place the application in condition for allowance because: Examiner notes that lines 2-3 of claims 1, 4, and 12 originally read "a first wheeled axle electrically driven with only electric regenerative brakes". In amendment A claim 1 lines 2-3 was changed to read "a first wheel axle exclusively only electrically driven, said first wheeled axle exclusively having only electric regenerative brakes". Examiner maintains that changing the language from "electrically driven" to "exclusively only electrically driven" introduces new matter. Examiner notes that the specification discloses and the drawings show a motor generator 14 which as described on pg.4 line 27 "powers the wheeled axle". Since the motor generator is an electrically powered mechanical device, the originally filed disclosure provides support not for a wheeled axle that is exclusively only electrically driven but for a wheeled axle that is both electrically and mechanically driven. Therefore, the 112 first rejections of claims 1, 4, and 12 have been maintained. With regards to the axle "exclusively having only electric regenerative brakes" as claimed in all of the independent claims, Examiner notes that terms such as "only" and "exclusively" lose their limiting function in combination with the use of the open-ended transitional term "comprising" used in the preamble of all of the independent claims. Due to its open-ended nature, the term "comprising" does not exclude additional, unrecited elements or method steps. See, e.g., Genentech, Inc. v. Chiron Corp., 112 F.3d 495, 501, 42 USPQ2d 1608, 1613 (Fed. Cir. 1997). Examiner recommends the use of the closed-ended transitional term "consisting" to effectively limit the claim to the recited elements.

mmB
4/14/03

M. C. Graham
4/17/2003

MATTHEW C. GRAHAM
PRIMARY EXAMINER
GROUP 310